IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2893 OF 2004

IN

SUIT NO. 120 OF 1984

The Sangli Bank Ltd. ..Plaintiff

versus

M/s. Jaypramad World Traders

& Others. ..Defendants

Mr. V. M. Mahajan i/b. Divekar & Co. for the Plaintiff, to show cause.

Mr. H. R. Gole for the Defendants, in support.

CORAM : D. G. DESHPANDE,J.

DATE : 26TH OCTOBER 2004.

P.C. :

1. Heard learned counsel for the defendants who has taken out this notice of motion for setting aside the exparte order dated 13.12.2001. The decree came to be passed because as per the impugned order the defendants did not file written statement, though copy was served upon the plaintiff. It is true that the original written statement is not on record. When the copy of the written statement was served upon the plaintiff, and this fact is admitted by the Counsel for the Plaintiffs, then presumption

would go in favour of the defendants that they had no purpose to withholding the written statement, atleast in the circumstances, with himself, and not filing in the court.

2. The notice of motion is taken out in September 2004. There is a delay and we can say that delay is an inordinate delay. However looking to the aforesaid facts and the fact that it is a money claim, notice of motion is allowed subject to defendants paying cost of Rs.3,000/= to the plaintiff. Payment of cost condition precedent. Cost to be paid within two weeks from today and also to file written statement and vakalatnama. Order dated 13.12.2001 is set aside. Suit is restored to file. Notice of motion disposed of.

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